

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

JORGE L. RODRIGUEZ GONZALEZ,
et al.,

Plaintiffs,

v.

**AXA EQUITABLE LIFE INSURANCE
COMPANY, et al.,**

CIVIL NO. 06-1717 (JAG)

Defendants

OPINION AND ORDER

11 Plaintiffs Jorge L. Rodriguez Gonzalez ("Rodriguez") and
12 Yvette Irizarry ("Irizarry") (collectively "plaintiffs") filed this
13 suit pursuant to 28 U.S.C. § 1332 against AXA Equitable Insurance
14 Company ("AXA") and Disability Management Services Inc. ("DMS")
15 (collectively "defendants") alleging bad faith resulting from
16 defendants' handling of Rodriguez' claim under his disability
17 insurance policy with AXA. Defendants filed a motion to dismiss
18 invoking *res judicata* (Docket No. 83) and plaintiffs filed a motion
19 to strike said motion arguing the deadline to file such motions had
20 passed (Docket No. 85). The court referred both the motion to
21 strike and the motion to dismiss to Chief Magistrate Judge Justo
22 Arenas for a report and recommendation.

23 Magistrate Judge Arenas issued a report and recommendation,
24 which asserted that both the motion to strike and motion to dismiss
25 should be denied. Magistrate Judge Arenas explained that the
26 motion to strike should be denied because the parties, with the
27 court's approval, had agreed at the Initial Scheduling Conference
28 of March 13, 2007 that motions dealing with *res judicata* would

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1 still be considered past the established deadline of February 9,
2 2007. Furthermore, Magistrate Judge Arenas recommended the denial
3 of the motion to dismiss holding that *res judicata* does not
4 preclude this suit for damages because the state court never
5 confronted the issues of bad faith, negligence and willfulness.
6 Defendants duly filed objections to the report and recommendation
7 averring that: (1) it was based on fundamental errors about the
8 procedural and factual history of the case before the state court
9 and (2) it failed to apply Puerto Rico *res judicata* law.

10 Upon *de novo* review, the court agrees with Magistrate Judge
11 Arenas's conclusions, albeit with some qualifications.
12 Accordingly, the court hereby **MODIFIES** and **ADOPTS** the report and
13 recommendation and **DENIES** both the motion to strike and the motion
14 dismiss.

15 **I. Standard for Review**

16 **A. Magistrate Judge's Report and Recommendation**

17 A district court may, on its own motion, refer a pending
18 matter to a United States Magistrate Judge for a report and
19 recommendation. See 28 U.S.C. § 636(b) (1) (B); Fed.R.Civ.P 72(b);
20 D.P.R. L.Civ.R 503. Pursuant to Federal Rule of Civil Procedure
21 72(b) and Local Rule 510.2, the adversely affected party may
22 contest the report and recommendation by filing written objections
23 "[w]ithin ten days of being served" with a copy of the order. 28
24 U.S.C. § 636(b) (1). Once timely objections to the report and
25 recommendation are filed, the Court shall make a *de novo*
26 determination of those portions of the report, specified proposed

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1 findings or recommendations to which objection is made. See United
2 States v. Raddatz, 447 U.S. 667, 673 (1980); Lopez v. Chater, 8 F.
3 Supp. 2d 152, 154 (D.P.R. 1998). Having defendants filed timely
4 objections to the report and recommendation, the Court will
5 consider the same.

6 **B. Motion to Dismiss**

7 In ruling on a motion to dismiss under Rule 12(b)(6), a court
8 must accept as true all the factual allegations in the complaint
9 and construe all reasonable inferences in favor of the plaintiffs.
10 See Alternative Energy, Inc. v. St. Paul Fire & Marine Ins. Co.,
11 267 F.3d 30, 33 (1st Cir. 2001); Doyle v. Hasbro, Inc., 103 F.3d
12 186, 190 (1st Cir. 1996). However, the court will not credit "bald
13 assertions, unsupportable conclusions, periphrastic
14 circumlocutions, and the like" when evaluating the complaint's
15 allegations. Aulson v. Blanchard, 83 F.3d 1, 3 (1st Cir. 1996).
16 The Supreme Court recently held that to survive a motion to
17 dismiss, a complaint must allege "a plausible entitlement to
18 relief." Rodriguez-Ortiz v. Margo Caribe, Inc., 490 F.3d 92, 95
19 (1st Cir. 2007) (quoting Bell Atl. Corp. v. Twombly, 127 S. Ct.
20 1955, 1967 (2007)). "[O]nce a claim has been stated adequately,
21 it may be supported by showing any set of facts consistent with the
22 allegations in the complaint." Twombly, 127 S. Ct. at 1969.
23 Therefore, in order to avoid dismissal, the plaintiff must provide
24 the grounds upon which his claim rests through factual allegations
25 sufficient "to raise a right to relief above the speculative
26 level." Id. at 1965.

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1 **III. Factual and Procedural Background**

2 Pursuant to Rule 12(b)(6), the court recites the following
3 facts as alleged in the complaint. See Langandinos v. Am.
4 Airlines, Inc., 199 F.3d 68, 69 (1st Cir. 2000). On January 20,
5 1994, plaintiffs purchased from AXA an insurance policy for income
6 disability benefits. In April 1996, Rodriguez was diagnosed with
7 "grand mal epilepsy," which fully disabled him and forced him to
8 resign from his job. Rodriguez then submitted a claim to AXA under
9 his insurance policy. AXA paid him timely \$1,250.00 a month.
10 Three years later, AXA contracted with DMS to handle their claims,
11 which is when the present dispute arose. Plaintiffs allege that
12 DMS' request of monthly medical visits in order to provide
13 documentation of Rodriguez' disability was not required by the
14 policy, and resulted in delayed payment of his benefits.

15 On January 25, 2005, plaintiffs filed a declaratory judgment
16 action before the Court of First Instance in San Juan. The state
17 court complaint averred that AXA had breached the insurance
18 contract by forcing Rodriguez to attend monthly medical checkups
19 and provide "proof of loss" forms. Plaintiffs requested in their
20 state court complaint: (1) an injunction against AXA, (2) a
21 declaration of the rights and obligations of the parties under the
22 disability policy, and (3) damages. Plaintiffs then filed a motion
23 for summary judgment, which the state court granted on June 28,
24 2005.

25 While ruling on the summary judgment motion, the state court
26 asserted that the only issue in dispute was whether or not the
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1 insured's certification of disability must be signed on a monthly
2 basis by a physician. The state court's decision hinged upon its
3 interpretation of the insurance policy clause that reads: "If the
4 policy provides for periodic payment for a continuing loss, written
5 proof of loss satisfactory to us must be given within 90 days from
6 the end of each monthly period for which we are liable." The state
7 court decided the clause was ambiguous, and interpreted it in favor
8 of the plaintiffs declaring that the policy did not demand monthly
9 medical examinations. The state court judge held the policy only
10 required that Rodriguez send AXA a monthly notice of his disability
11 status and that the physician documentation only needed to be sent
12 when Rodriguez' physician summoned him for evaluation.

13 However, the state court only granted equitable relief and did
14 not discuss damages. Plaintiffs brought this to the state court's
15 attention by filing a motion for partial reconsideration. On July
16 10, 2005, the state court judge amended the judgment admitting he
17 did not notice that plaintiffs had also requested damages, and
18 dismissing without prejudice the damages portion of the suit and
19 on July 21, 2006, plaintiffs filed this suit asking for damages as
20 a result of AXA's alleged breach of contract.

21 **IV. Analysis**

22 **A. Magistrate Judge's Report and Recommendation**

23 In this report and recommendation, Magistrate Judge Arenas
24 clarified that the parties had agreed that any motions dealing with
25 *res judicata* would still be considered after the February 9, 2007
26 deadline. Plaintiffs did not object to the Magistrate's
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1 recommendation to deny the motion to strike. Therefore, in the
2 court's discretion and pursuant to Magistrate Judge Arenas'
3 recommendation, the court hereby denies plaintiffs' motion to
4 strike (Docket No. 85).

5 Defendants, on the other hand, did object to the
6 Magistrate Judge's recommendation that the court deny the motion to
7 dismiss. According to defendants, the Magistrate Judge's
8 recommendation is based on (1) fundamental errors about the
9 procedural and factual history of the case, and (2) on failing to
10 apply Puerto Rico *res judicata* law. As to the first alleged error,
11 Defendants assert that Magistrate Judge Arenas mistakenly concluded
12 that Rodriguez's original state court complaint made no demand for
13 damages. However, this possible factual error does not yield a
14 different result. As to the second alleged error, the court agrees
15 that Puerto Rico's *res judicata* law controls here. The *res*
16 *judicata* analysis requires an inquiry of the state court's
17 treatment of the motion for summary judgment.

B. Res Judicata

Res judicata means "the thing has been decided." Vega Arriaga v. J.C. Penney, Inc., 658 F. Supp. 117, 119 (1st Cir. 1987). "In Puerto Rico, as in most jurisdictions, the term *res judicata* is often used to refer to either of two distinct but related doctrines." Gener-Villar v. Adcom Group, Inc., 417 F.3d 201, 205 (1st Cir. 2005). The first doctrine is claim preclusion and "generally binds parties from litigating or relitigating any [claim] that was or could have been litigated in a prior

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1 adjudication and prevents claim splitting." Id. at 205 (quoting
 2 Futura Dev. Corp. v. Centex Corp., 761 F.2d 33, 42 (1st Cir.
 3 1985)). The second doctrine is collateral estoppel, also known as
 4 issue preclusion, which "bars 'successive litigation of an issue of
 5 fact or law actually litigated and resolved in a valid court
 6 determination essential to the prior judgment,' even if the issue
 7 recurs in the context of a different claim." Taylor v. Sturgell,
 8 128 S. Ct. 2161, 2171 (2008) (quoting New Hampshire v. Maine, 532
 9 U.S. 742, 748-49 (2001)).

10 Puerto Rico's *res judicata* statute, Article 1204 of the Civil
 11 Code of Puerto Rico, P.R. Laws Ann. tit. 31, § 3343 ("Article
 12 1204"), states in pertinent part:

13 In order that the presumption of the *res adjudicata* may
 14 be valid in another suit, it is necessary that, between
 15 the case decided by the sentence and that in which the
 16 same is invoked, there be the most perfect identity
 between the things, causes and persons of the litigants,
 and their capacity as such.

17 It is understood that there is identity of persons
 18 whenever the litigants of the second suit are legal
 19 representatives of those who litigated in the preceding
 20 suit, or when they are jointly bound with them or by
 the relations established by the indivisibility of
 21 prestations among those having a right to demand them,
 or the obligation to satisfy the same.

22 Interpreting Article 1204, the Puerto Rico Supreme Court held that
 23 for *res judicata* to apply, the judgment (1) must be final, (2) must
 24 have been rendered by a court with proper jurisdiction, and (3)
 25 must have been on the merits. *See Bolker v. Tribunal Superior*, 82
 26 D.P.R. 816, 823-25 (1961); *see also R.G. Financial Corp. v.*
 27 Vergara-Nunez, 446 F.3d 178, 183 (1st Cir. 2006) ("a party

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1 asserting a res judicata defense under Puerto Rico law must
 2 establish three elements: (i) the existence of a prior judgment on
 3 the merits that is 'final and unappealable'; (ii) a perfect
 4 identity of thing or cause between both actions; and (iii) a
 5 perfect identity of the parties and the capacities in which they
 6 acted".

7 In this case, the only *res judicata* requirement at issue is
 8 whether the judgment was made "on the merits," that is, whether
 9 there is perfect identity between the "causes," "persons," and
 10 "things" of both suits. See P.R. Laws Ann. tit. 31, § 3343;
 11 Boateng v. Interamerican Univ. Inc., 210 F.3d 56, 62 (1st Cir.
 12 2000). However, the term "perfect identity" is not interpreted
 13 literally. R.G. Financial Corp., 446 F.3d at 183. "[T]he word
 14 'cause' . . . refers to the factual cause; actions share this type
 15 of perfect identity when they flow from the same principal ground
 16 or origin." Id. The Puerto Rico Supreme Court held that the
 17 correct method to determine whether a previous sentence impedes a
 18 subsequent claim is to inquire whether the same evidence would
 19 suffice to sustain both actions. Millan v. Caribe Motors, 83
 20 D.P.R. 494, 507 (1961). If different evidence is needed to sustain
 21 the different claims, then there are different causes of actions
 22 and the first adjudication does not impede future litigation of the
 23 other cause of action. Id. at 507.

24 Defendants argue that both suits have the same causes of
 25 action. The court agrees. Both suits allege bad faith and illegal
 26 practices, which plaintiffs assert caused them damages. The same
 27 evidence which could have been provided to demonstrate the factual

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1 cause of action in the first suit would be presented in the instant
 2 case because the alleged origin of bad faith and illegal actions is
 3 the same in both circumstances. Therefore, there is a perfect
 4 identity of "causes."

5 Also, the perfect identity of "persons" is obvious since the
 6 present action has the same parties as the state court action.
 7 Even though DMS was not a defendant in the state court suit, this
 8 does not change the outcome of the *res judicata* analysis because
 9 DMS is "jointly bound" to AXA as its claims handling
 10 representatives. See P.R. Laws Ann. tit. 31, § 3343; *see also R.G.*
 11 *Financial Corp.*, 446 F.3d at 185-86 ("the joinder of additional
 12 defendants in the suit, without more, does not destroy the perfect
 13 identity of parties that is needed for preclusion").

14 Nevertheless, defendants fail to show there is a perfect
 15 identity of "things" as required by Puerto Rico *res judicata* law.
 16 "[T]he word 'thing' as used in [Article 1204,] 'corresponds
 17 basically to the object or matter over which the action is
 18 exercised.'" *R.G. Financial Corp.*, 446 F.3d at 183 (quoting
 19 *Lausell Marxuach v. Diaz de Yanez*, 103 D.P.R. 533, 535 (1975)).
 20 "Two actions share an identity of 'things' if a decision in the
 21 second action might function to contradict 'a right arisen or
 22 arising from, or a right affirmed by [a] prior decision.'" *R.G.*
 23 *Financial Corp.*, 446 F.3d at 183 (quoting *A & P Gen. Contractors,*
 24 *Inc. v. Asociacion Cana, Inc.*, 110 D.P.R. 753, 765 (1981)).

25 In the present action, addressing the action for damages would
 26 not interfere with the state court's decision. The state court
 27 treated the complaint exclusively as a declaratory judgment
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1 requesting injunctive relief. The state court admitted "[it] did
2 not notice that plaintiffs had added an action for damages together
3 *with the action for injunction already resolved.*" Docket No. 83-10
4 (our emphasis added). Since the state court did not notice the
5 action for damages, it never addressed and adjudicated the issues
6 needed for its determination. When confronted with the oversight,
7 the trial court simply dismissed the damages action without
8 prejudice. Therefore, there is no perfect identity of "things,"
9 and the third requisite of adjudication "on the merits" is not met.
10 Hence, this suit is not barred by *res judicata*.

11 **V. Conclusion**

12 _____For the foregoing reasons, the court hereby **MODIFIES** and
13 **ADOPTS** the report and recommendation. Accordingly, plaintiffs'
14 motion to strike (Docket No. 85) and defendants' motion to dismiss
15 (Docket No. 83) are hereby **DENIED**.

16 _____**SO ORDERED**

17 _____In San Juan, Puerto Rico, this 11th day of August 2008.

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19 S/Jay A. Garcia-Gregory
20 JAY A. GARCIA-GREGORY
21 United States District Judge
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